



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Michael E. Toner, Esquire
Bryan Cave LLP
700 Thirteenth Street, NW
Washington, DC 20005-3960

JUN 22 2010

**RE: MUR 6217
Haley's PAC and
Henry Barbour, in his official
capacity as treasurer**

Dear Mr. Toner:

On October 14, 2009, the Federal Election Commission notified your clients, Haley's PAC and Henry Barbour, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint and information supplied by your clients, the Commission, on June 15, 2010, voted to dismiss the complaint's allegations as to your clients. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact April Sands, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark Allen".

**Mark Allen
Assistant General Counsel**

**Enclosure
Factual and Legal Analysis**

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 6217

RESPONDENT:

Haley's PAC and Henry Barbour, in his
official capacity as treasurer¹

The complaint alleges violations of 2 U.S.C. § 441f and 11 C.F.R. § 110.4(b) stemming from a \$5,000 contribution to David Vitter for U.S. Senate ("Vitter Committee") made on August 11, 2009 by Haley's PAC and its treasurer ("Haley's PAC"), a multi-candidate political action committee associated with Mississippi Governor Haley Barbour, that allegedly was reimbursed by Commerce, Hope, Innovation & Progress PAC and Danna S. Lane, in her official capacity as treasurer ("CHIP PAC"), a multi-candidate political action committee sponsored by former Congressman Chip Pickering. The complaint bases its allegations on the following: (1) in the same week that Haley's PAC contributed \$5,000 to the Vitter Committee, Haley's PAC received a contribution in an identical amount from CHIP PAC; (2) based on its receipt and contributions history, it was not common for Haley's PAC to make contributions; in fact, Haley's PAC's contribution to the Vitter Committee was only one of two it had made during 2009, and Haley's PAC disclosed only \$13,281.37 cash outstanding at the end of the reporting period in which it made the Vitter contribution; (3) the contribution to Haley's PAC constituted CHIP PAC's first contribution in 2009; (4) there are media-sensitive reasons Chip Pickering would want to hide the fact that his PAC was

¹ Austin Barbour was the treasurer of Haley's PAC at the time the complaint was filed. The PAC filed an amended Statement of Organization on December 10, 2009, stating that its treasurer is now Henry Barbour.

1 providing support to Senator Vitter; and (5) Chip Pickering and Austin Barbour, nephew
2 to Haley and then-treasurer of Haley's PAC, work together at a lobbying firm, and
3 therefore had the opportunity to devise the alleged conduit scheme. Haley's PAC
4 maintains that the complaint fails to establish reason to believe that the respondents made
5 a contribution in the name of another or received a prohibited earmarked contribution,
6 and, thus, urges the Commission to find no reason to believe the respondents violated the
7 Act, and dismiss the complaint. For the reasons below, the Commission dismisses the
8 complaint against Haley's PAC and Henry Barbour, in his official capacity as treasurer.

9 **II. DISCUSSION**

10 The complaint alleges that CHIP PAC may have made a contribution in the name
11 of Haley's PAC to the Vitter Committee. The Federal Election Campaign Act of 1971,
12 as amended (the "Act") provides that "[n]o person shall make a contribution in the name
13 of another person or knowingly permit his name to be used to effect such a contribution
14 and no person shall knowingly accept a contribution made by one person in the name of
15 another person." 2 U.S.C. § 441f. This prohibition extends to persons who knowingly
16 help or assist in making such contributions. *See* 11 C.F.R. § 110.4(b)(1)(iii).

17 On August 11, 2009, Haley's PAC made a \$5,000 contribution to the Vitter
18 Committee. Four days later, CHIP PAC made a \$5,000 contribution to Haley's PAC.
19 Haley's PAC disclosed both transactions on its FEC disclosure report filed with the
20 Commission on September 20, 2009. Haley's PAC states that its \$5,000 contribution to
21 the Vitter Committee "was made in connection with a fundraising event held for the
22 Vitter Committee in Jackson, Mississippi on August 12, 2009." Haley's PAC Response

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1 at 2. The response also notes that the contribution at issue was, on its face, from a
2 permissible source and in compliance with the Act's contribution limits, and suggests that
3 the complaint is based solely on speculation. Haley's PAC Response at 5.

4 The complaint also alleges that Chip Pickering and Austin Barbour, the treasurer
5 of Haley's PAC at the time of the contributions in issue, had the opportunity to devise the
6 alleged conduit scheme as both worked together at the same lobbying firm. It cites to an
7 Internet blog report stating that Austin Barbour reportedly responded "no comment" to
8 the allegations. *See* Complaint at 3, footnote 6. In response, Heather Larrison, a political
9 consultant, provided an affidavit stating that she did not have communications, and was
10 not aware of any, between Senator Vitter or anyone else in the Vitter Committee
11 concerning CHIP PAC's contribution to Haley's PAC or Haley's PAC contribution to the
12 Vitter Committee. *See* Affidavit of Heather Larrison attached to Haley's PAC Response.
13 The affidavit does not address whether there were any communications or discussions
14 between Haley's PAC personnel and CHIP PAC personnel regarding the contributions at
15 issue.

16 Although not alleged in the complaint, the Respondents also assert there were no
17 violations of the earmarking regulation at 11 C.F.R. § 110.6, which provides that all
18 contributions that a person earmarks or otherwise directs to a candidate through an
19 intermediary or conduit are considered contributions from the person to the candidate.
20 The response provides copies of the checks, which are unencumbered by any written
21 designation or instruction, and an affidavit stating that the contribution checks were not
22 accompanied by any written encumbrance concerning the contribution. In a recent

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1 enforcement matter, the Commission has determined that funds are considered earmarked
2 only when there is clear documented evidence of acts by donors that resulted in their
3 funds being used by the recipient committees for expenditures on behalf of a particular
4 campaign. MUR 5732 (Matt Brown), Factual & Legal Analysis at 6.

5 Given that the contribution from CHIP PAC to Haley's PAC, and from Haley's
6 PAC to the Vitter Committee, were each disclosed and the contributions did not result in
7 the Vitter Committee receiving an excessive or prohibited contribution, it would not be
8 an efficient use of the Commission's resources to pursue this matter further given the
9 relatively low amount at issue. Accordingly, the Commission exercises its prosecutorial
10 discretion and dismisses the complaint as to Haley's PAC and Henry Barbour, in his
11 official capacity as treasurer. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

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